

REMARKS/ARGUMENTS

Claims 1-5, 7-8, 10-12, 15, and 49-52 were pending. Claims 1, 10, 11, 12, and 49 have been amended. New claims 53-55 have been added. No new matter has been presented by the amendments to the claims or the new claims.

In the Office Action, the Examiner rejected claims 1-5, 7-8, 10-12, 15, and 49-52 under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims 1-21 of United States Patent Number 6,221,074. To the extent the rejection applies to the amended claims, Applicants respectfully traverse the rejection.

Applicants are filing herewith a terminal disclaimer, disclaiming the terminal portion of any patent that issues from this application beyond the term of United States Patent Number 6,221,074. Applicants respectfully request that the Examiner withdraw the rejection to claims 1-5, 7-8, 10-12, 15, and 49-52.

In the Office Action, the Examiner rejected claims 1-5, 7-8, 10-12, 15, and 49-52 under 35 U.S.C. Section 112, second paragraph, as being indefinite for failing to particular point out and distinctly claim the subject matter which applicant regards as the invention. To the extent the rejection applies to the amended claims, Applicants respectfully traverse the rejection.

Applicants have amended claim 1, line 8 to provide antecedent basis for the term “the longitudinal axis.” Applicants have amended claim 1, line 10 by changing “said opening” to “said longitudinal opening,” as the Examiner suggested. Applicants have amended claim 49 to provide antecedent basis for “said slot” and to clarify the meaning of lines 2-3.

Applicants respectfully request that the Examiner withdraw the rejection to claims 1-5, 7-8, 10-12, 15, and 49-52.

In the Office Action, the Examiner rejected claims 1, 2, 4, 10, and 49 under 35 U.S.C. Section 102(b) as being anticipated by Durham (United States Patent Number 5,032,125). To the extent the rejection applies to the amended claims, Applicants respectfully traverse the rejection.

Applicants respectfully submit that independent claim 1 recites the limitations of “a first intersecting transverse opening, said first transverse opening having an upper surface and a lower surface, and a second intersecting transverse opening, said second transverse opening having an upper surface and a lower surface.” Applicants respectfully submit that Durham does not teach or suggest the desirability of the recited limitations.

Applicants respectfully submit that dependent claims 2, 4, and 10 are allowable for at least the same reasons as independent allowable claim 1 from which they depend.

Applicants respectfully submit that independent claim 49 recites the limitations of “a positioning device disposed in said longitudinal passage, the position of said device being adjustable along the longitudinal axis of said nail to move said bone engaging member passing through said transverse opening and compress or distract said bone fracture.” Applicants respectfully submit that Durham does not teach or suggest the desirability of the recited limitations.

Applicants respectfully request that the Examiner withdraw the rejection to claims 1, 2, 4, 10, and 49.

In the Office Action, the Examiner rejected claims 11, 12, and 15 under 35 U.S.C. Section 103(a) as being anticipated by Durham (United States Patent Number 5,032,125) in view of Kim (United States Patent Number 5,743,908). To the extent the rejection applies to the amended claims, Applicants respectfully traverse the rejection.

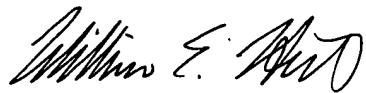
Applicants respectfully submit that Kim does not remedy the defects of Durham discussed above regarding allowable independent claim 1, from which rejected claims 11, 12, and 15 depend. Applicants respectfully submit that rejected claims 11, 12, and 15 are allowable for at least the same reasons as independent claim 1, discussed above.

Applicants respectfully request that the Examiner withdraw the rejection to claims 11, 12, and 15.

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It is believed that the claims are now in condition for allowance and a Notice of Allowance is hereby respectfully requested. The undersigned would welcome an interview to discuss any issues which may remain.

Respectfully submitted,



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